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THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SANFORD J. WISHNEV, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY, a Wisconsin
corporation, and DOES 1-10, inclusive,

Defendants.

Case No. 3:15-CV-03797-EMC

**STIPULATION AND ~~[PROPOSED]~~
ORDER TO CONTINUE STAY AND CASE
MANAGEMENT CONFERENCE;
DECLARATION OF MICHAEL STORTZ**

1 WHEREAS, on June 9, 2016, the Ninth Circuit Court of Appeals granted Defendant The
2 Northwestern Mutual Life Insurance Company's ("Northwestern Mutual") petition to appeal this
3 Court's Order denying Northwestern Mutual's motion to dismiss;

4 WHEREAS, this action has been stayed since June 30, 2016, when this Court issued an
5 order (Dkt. No. 69) staying the action "pending completion of the appellate review or further
6 order";

7 WHEREAS, appellate briefing in Northwestern Mutual's appeal has been complete since
8 January 27, 2017, and the parties are currently awaiting a date to be set for oral argument;

9 WHEREAS, in addition to Northwestern Mutual's appeal, there are two other appeals
10 presenting the same issues pending in the Ninth Circuit: *Martin v. Metro. Life Ins. Co.*, No. 16-
11 15690 (9th Cir. Apr. 15, 2016) and *Lujan v. New York Life Ins. Co.*, No. 16-16401 (9th Cir. Aug.
12 9, 2016);

13 WHEREAS, appellate briefing in *Martin* and *Lujan* is also complete, and the parties in
14 those appeals are awaiting a date to be set for oral argument;

15 WHEREAS, on June 30, 2016, in addition to staying this action, the Court set a further
16 Case Management Conference ("CMC") for March 30, 2017 (Dkt. No. 69);

17 WHEREAS, by minute order dated March 2, 2017 (Dkt. No. 71), the Court rescheduled
18 the March 30, 2017 CMC to occur two days earlier, on March 28, 2017;

19 WHEREAS, the Parties through counsel have met and conferred and agree that given the
20 status of Northwestern Mutual's appeal, as well as the *Martin* and *Lujan* appeals, all of which are
21 fully-briefed and awaiting oral argument, (1) the existing stay in this action should continue for
22 six more months; and (2) the March 28, 2017 CMC should likewise be continued for six months;

23 WHEREAS, Plaintiff's agreement to the above six month continuance is with full
24 reservation of his right to urge (should he deem it appropriate) that the existing stay be lifted at
25 the continued CMC, whether because of changed circumstances or otherwise; and

26 WHEREAS, the requested continuance will not impact any other deadlines already set by
27 the Court.

28 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties through

1 their respective counsel as follows:

2 1. This action should remain stayed until the date on which the Court holds the next
3 Case Management Conference or pending further Order of the Court; and

4 2. The Case Management Conference currently scheduled for March 28, 2017
5 should be continued to September 28, 2017 at 10:30 a.m., or the next date that is available for the
6 Court.

7 IT IS SO STIPULATED.

8 Dated: March 8, 2017

DRINKER BIDDLE & REATH LLP

9
10 By: /s/ Michael J. Stortz

11 Michael J. Stortz
Marshall L. Baker

12 Attorneys for Defendant
13 THE NORTHWESTERN MUTUAL LIFE
14 INSURANCE COMPANY

15 Dated: March 8, 2017

BRAMSON, PLUTZIK, MAHLER &
16 BIRKHAUSER, LLP

17
18 By: /s/ Robert M. Bramson

Robert M. Bramson

19 Attorneys for Plaintiff
20 SANFORD J. WISHNEV

21 **Attestation Pursuant to Civil Local Rule 5-1(i)**

22 Pursuant to Civil Local Rule 5-1(i), I, Michael J. Stortz, hereby attest that I have
23 obtained concurrence in the filing of this document from the other signatory to this document.

24 I declare under penalty of perjury under the laws of the United States of America that
25 the foregoing is true and correct. Executed this 8th day of March, 2017 in San Francisco,
26 California.

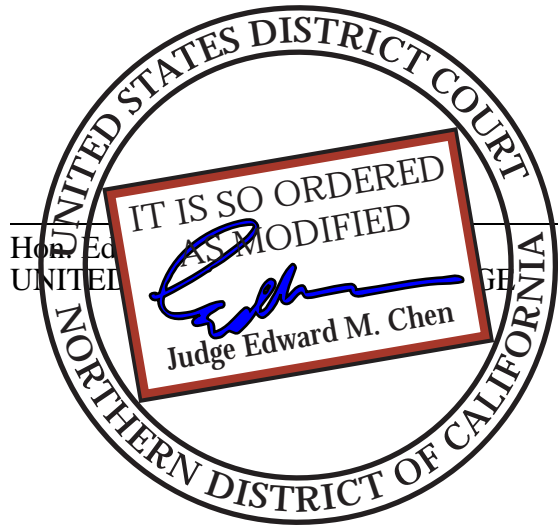
27 /s/ Michael J. Stortz

Michael J. Stortz

[PROPOSED] ORDER

Pursuant to Stipulation, **IT IS SO ORDERED**. The Case Management Conference presently scheduled for March 28, 2017 is hereby continued and shall be held on Sept. 28, 2017 at 10:30 a.m.

Date: March 10, 2017



DECLARATION OF MICHAEL J. STORTZ

I, Michael J. Stortz, declare as follows:

1. I am an active member in good standing of the Bar of the State of California, admitted to practice before this Court, and a partner with the firm of Drinker Biddle & Reath LLP, attorneys of record for Defendant The Northwestern Mutual Life Insurance Company (“Northwestern Mutual”) in the above-entitled action. I make this Declaration in support of the parties’ Stipulation to Continue Stay and Case Management Conference. If called, I could and would testify to the matters set forth herein.

2. This action has been stayed since June 30, 2016. Since that time, Northwestern Mutual has pursued an appeal in the Ninth Circuit as to this Court’s interlocutory Order denying Northwestern Mutual’s motion to dismiss.

3. In Northwestern Mutual’s appeal, the parties have filed their respective briefs, and appellate briefing has been complete since January 27, 2017. The parties are currently awaiting a date to be set for oral argument.

4. In addition to Northwestern Mutual’s appeal, there are two other appeals presenting the same issues pending in the Ninth Circuit: *Martin v. Metro. Life Ins. Co.*, No. 16-15690 (9th Cir. Apr. 15, 2016) and *Lujan v. New York Life Ins. Co.*, No. 16-16401 (9th Cir. Aug. 9, 2016).

5. The appellate briefing in *Martin* and *Lujan* is also complete, and the parties in those appeals are awaiting a date to be set for oral argument.

6. On March 2, 2017, the parties in the present action met and conferred through counsel and agreed to a continuance of the existing stay for six more months.

7. There is good cause to continue the stay, and to continue the March 28, 2017 Case Management Conference to September 28, 2017, as Northwestern Mutual’s appeal, *Martin*, and *Lujan* each present the same threshold questions of law, the resolution of which may obviate the need for any further proceedings in this Court.

8. The requested continuance will not impact any deadlines already set by the Court.

9. To date, the other time modifications in this case are as follows: on August 31, 2015, the Court approved the Parties' Stipulation As to Filing of the Amended Complaint; on November 5, 2015, the Court reset the hearing on Northwestern Mutual's Motion to Dismiss Plaintiff's First Amended Complaint and reset the Case Management Conference to November 20, 2015; on November 20, 2015, the Court again reset the Case Management Conference to January 21, 2016; on January 12, 2016, the Court again reset the Case Management Conference to March 3, 2016; on February 23, 2016, the Court granted Northwestern Mutual's Motion to Continue the Case Management Conference to March 24, 2016; on May 31, 2016, the Court approved the Parties' stipulated request to continue the Case Management Conference to June 30, 2016; and on March 2, 2017, the Court rescheduled the March 30, 2017 Case Management Conference for March 28, 2017.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day of March, 2017 at San Francisco, California.

/s/ Michael J. Stortz
Michael J. Stortz